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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Foundation for Aboriginal and Islander Research Action Aboriginal Corporation, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 August 2018]

* Issued as received, in the language(s) of submission only.

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Australia's Record on the Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights of Aboriginal and Torres Strait Islander Peoples

Australia's Candidacy for the Human Rights Council

During it candidacy for a position on the Human Rights Council, Australia built its campaign on five pillars:

- gender equality
- good governance
- freedom of expression
- the rights of Indigenous peoples
- strong national human rights institutions and capacity building.

Australia pledged to work towards a referendum to recognize Aboriginal and Torres Strait Islander peoples in the Australian Constitution as Australia's First Peoples.

Yet, the Australian Government dismissed out of hand the recommendations of the Referendum Council made following a process of consultation with Aboriginal and Torres Strait Islander peoples in 2016 and 2017. Yet another Parliamentary Select Committee was established to consider the recommendations of the council and former panels and committees. The ongoing referral of this matter for review and recommendation is the government's attempt at side-stepping the issue until it finally receives a recommendation it can support. It does not seem to comprehend that First Peoples will not support a referendum which does not involve substantive reform.

Australia pledged to continue to give practical effect to the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) and the World Conference on Indigenous Peoples (WCIP) Outcomes Document.

Yet Australia refuses to legislate to implement the Declaration into Australian Law in consultation and cooperation with Aboriginal and Torres Strait Islander peoples and refuses to develop, implement and monitor a national strategy or action plan to implement the Declaration.

The Special Rapporteur on the Rights of Indigenous peoples visited Australia in 2017 (A/HRC/36/46/Add.2) and made a number of recommendations aimed at making Australia's laws consistent with the Declaration. None has been accepted.

Australia committed to strengthening the capacity of the multilateral system to engage on issues affecting the world's Indigenous peoples. Yet, Australia engages in 'rights ritualism' by embracing the language of human rights but failing to implement the Declaration into domestic law and practices.

Australia committed to harnessing the knowledge and expertise of Indigenous Australians in the design and delivery of [its] aid programme.

Yet the Australian Government defunded the only national representative institution of Aboriginal and Torres Strait Islander peoples, the National Congress of Australia's First Peoples (National Congress) thus depriving it of its capacity to promote and protect and effectively advocate for the rights of Aboriginal and Torres Strait Islander peoples. While some funds have been provided for specific projects, Australia still refuses to properly resource the National Congress as an effective advocacy body for First Peoples.

Instead, it cites the government-appointed Indigenous Advisory Committee, its own Indigenous servicing network and half-baked consultation processes as evidence of its willingness to consult and cooperate with Aboriginal and Torres Strait Islander peoples.

Australia noted that independent national human rights institutions in a strong and robust civil society play a strong role in preserving and advancing human rights and stated that Australia is a strong advocate for strengthening the capacity of national human rights institutions to promote and protect human rights.

Yet Australia has cut funding to the Australian Human Rights Commission and, rather than acknowledge the counsel of the Commissioners, its Ministers publicly abuse those Commissioners who make findings which are not in line with government policy or political imperatives. Even worse, it seeks to whip up hysteria via its friends in the media in an attempt to control the Commission's work.

Since it was elected in 2013, the government has twice sought to remove or amend Section 18(c) the Racial Discrimination Act to remove the words "offend, insult, humiliate" on the basis that it imposes unreasonable restrictions on freedom of speech. Fortunately, its attempts have been blocked by the Senate, Australia's upper house of the Parliament but this cannot be guaranteed in future.

Australia's Closing the Gap and Indigenous Advancement Strategies

The Prime Minister's Closing the Gap Report 2018 implies that governments have acknowledged the ongoing legacy of trauma, grief and loss associated with colonisation.

However, for Aboriginal and Torres Strait Islander peoples, the process of colonisation continues. Until it is properly addressed, programmes to overcome disadvantage are doomed to failure. Governments will continue to implement policies and programmes aimed at assimilating our peoples.

The Closing the Gap (CTG) strategy has been in place for ten years. The government's CTG report 2018, is a classic example of "making a silk purse out of a sow's ear". It cites three of the seven targets being on track as an achievement! For a start, most of the targets are not aimed at 'closing the gap' as the title implies but at halving the gap. For instance, all of the targets on literacy, numeracy and reading, the target on employment are to halve the gaps within ten years (from 2009). None of these are on track. The primary target – aimed at closing the gap in life expectancy by 2031 – is not on track.

Introduced in 2014, the Indigenous Advancement Strategy (IAS) is the federal government's headline programme which underlies the CTG strategy. It has been a massive failure. Firstly, the government cut of more than $500m from the IAS in its first budget despite evidence that indicators of disadvantage were not improving and, in many instances, getting worse. Secondly, the government refused to consult with or listen to First Peoples' organisations, indeed it defunded the National Congress. In implementing a new tender-like process for service delivery, the IAS resulted in many First Peoples' communities and organisations being defunded.

The Special Rapporteur on the Rights of Indigenous Peoples noted in her report following her visit to Australia that the IAS has undermined the role of First Peoples' organisations in providing services for their communities and has had a devastating impact on their organisations – contrary to the principles of self-determination and participation. The Special Rapporteur recommended that the government revise the IAS and CTG strategies in consultation with the Aboriginal and Torres Strait Islander Social Justice Commissioner, the National Congress, the Indigenous Advisory Council and relevant peak indigenous organisations.

Sustainable Development Goals

Australia states in its first voluntary National Review1 on progress with the Sustainable Development Goals (SDGs) that "[t]he SDGs reflect the things that Australians value highly and seek to protect, like … our Aboriginal and Torres Strait Islander cultures and heritage."

Australia acknowledges that [many] people remain at risk of being left behind, including Aboriginal and Torres Strait Islander peoples.

Yet it does not seek to engage representatives of First Peoples in the 2030 Agenda. FAIRA is not aware of any mechanisms for governments and First Peoples' representatives to consider the goals and what is needed to achieve them.

Recent research by the Menzies School of Health Research reveals that one in 20 Aboriginal children at Maningrida, a remote community of around 3,000 in the Northern Territory, suffered from rheumatic heart disease – the highest known rate in the world. Another recent report revealed that 100% of all children in detention in the NT are Indigenous. FAIRA would like to report that these are aberrations. But they are not.

The Special Rapporteur on the Rights of Indigenous Peoples noted that the extraordinarily high rate of incarceration of Aboriginal and Torres Strait Islanders, including women and children, is a major human rights concern. She warned that Aboriginal and Torres Strait Islander people will comprise 50% of the prison population by 2020 despite being only 3% of the overall population. She made a number of recommendations to address this scandal, echoing recommendations of the four treaty bodies which considered Australia's compliance with their treaties, CERD (CERD/C/AUS/CO/18-20), HRC (CCPR/C/AUS/CO/6), CESCR (E/C.12/AUS/CO/5) and CEDAW (CEDAW/C/AUS/CO/8) in 2017 and 2018.

Australia cannot continue to claim that its federal system prevents the national government from taking action, excusing itself from responsibility on the grounds that child protection, youth detention and the criminal justice systems are the purview of state and territory governments.

Recommendations

Australia should in genuine consultation and cooperation with First Peoples' representatives:

1. **Provide resources to, and commence genuine consultations with, the National Congress as the national representative body for Aboriginal and Torres Strait Islander Peoples;**
2. **Provide resources to and support capacity building and governance of First Peoples organisations;**
3. **Establish a mechanism to consider the best ways of legislating the Declaration into domestic law;**
4. **Develop, implement and monitor a national action plan to implement the Declaration;**
5. **Review the CTG strategy and the IAS based on the principles in the Declaration;**
6. **Restore the primary place of First Peoples organisations in the delivery of services to our communities;**
7. **Develop an effective strategy to achieve the Strategic Development Goals by 2030;**
8. **Develop and implement a strategy to implement the recommendations of the Royal Commission into Aboriginal and Torres Strait Islander Deaths in Custody, the Royal Commission into Juvenile Detention in the Northern Territory and the various United Nations treaty bodies and special procedures;**
9. **Develop a transparent process for considering the reports and recommendations of the various United Nations treaty bodies and special procedures, including making Australia's responses available on line.**